

City Attorney's Impartial Analysis

Measure V would amend Charter Section 1111 to change the mandatory arbitration process for police and fire department employee disputes.

Currently, Section 1111 requires that unresolved disputes about wages, hours, or terms and conditions of employment between the City of San José and the applicable police or fire employee organization be submitted to a three member Arbitration Board. The City and applicable employee organization each select one arbitrator and they jointly select the third as the neutral arbitrator who serves as the Board's chair. If the parties cannot agree on the neutral arbitrator, they strike names from a list provided by the State. After the arbitration hearing, the parties submit a last offer on each issue, and the Board, by majority vote, decides each issue by selecting the last offer that most nearly conforms to factors traditionally taken into consideration in the determination of wages, hours and other terms of public and private employment. Section 1111 lists a number of these factors, including the City's financial condition and its ability to pay the award's cost, but does not specify a priority.

This measure would change the arbitration procedure as follows:

If the parties cannot agree on the neutral arbitrator, then either party may request the Santa Clara County Superior Court to appoint a retired Superior Court judge.

Arbitration hearings must be open to the public and documents submitted are public records, unless provided otherwise by law.

State law governing arbitrations shall apply only to the extent that they do not conflict with Section 1111.

This measure would also change the factors considered by the Board. The Board must determine which party's last offer satisfies certain financial factors, is in the best interest and promotes the welfare of the public and most nearly conforms to the traditional factors. The primary factors, however, are the City's financial condition and its ability to pay for compensation (defined to include wages and benefits) from ongoing revenues without reducing services. Further, substantial weight must be given to the rate of increase or decrease in compensation for other City employees.

The Board could not issue an award that would (1) increase the projected cost of compensation at a rate that exceeds the rate of increase of certain revenues averaged over the prior five fiscal years; (2) retroactively increase or decrease compensation for service already rendered, excluding base wages; (3) create a new unfunded liability for which the City would be obligated to pay; or (4) interfere with the discretion of the Police or Fire Chiefs to make operational or staffing decisions.

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This measure would also allow court action for failure to comply with Section 1111. Lastly, the measure provides that if a court determines that any portion of Section 1111 is not valid or enforceable, then Section 1111 will be inoperative and there will be no compulsory arbitration for police and fire employee disputes.

A “yes” vote is a vote to approve the changes described above.

A “no” vote is a vote to maintain the existing Section 1111.

/s/

Richard Doyle, City Attorney
City of San José

The above statement is an impartial analysis of Measure V. If you would like to read the full text of the measure, see www.sanjoseca.gov/clerk/elections/Election.asp or call 408-535-1260 and a copy will be sent at no cost to you.